

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6359 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOLI PATEL LALAJI RASU

Versus

PATEL JERAM KHUSHAL

Appearance:

MS PURVI SHETH for Petitioners
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/97

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly, in the third round but none put appearance for the respondent. Heard the learned counsel for the petitioners and perused the Special Civil Application.
2. The petitioners have filed this petition against the order passed by the Deputy Collector, Dhangadhra

Division in exercise of revisional power as conferred upon him under the provisions of sec.23 of the Mamlatdars Court Act, 1906.

3. The dispute relates to the flow of natural water from the land in dispute. The petitioners are the resident of Village Vithalpara in Lakhatar Taluka, District Surendranagar. They owned agricultural lands on the outskirts of Village Vithalpara adjoining to the road running between the Village Chhabadi and Vithalpara. The respondent is also the resident of the said village and owns land bearing survey No.203 on the southern side of the road between Chhabadi and Vithalpara, just opposite to the fields of the petitioners. The fields of the respondent as well as the petitioners are exactly opposite to each other on either side of the road leading from Vithalpara to Chhabadi road station. The details of the survey numbers and the situation of the lands of the parties have been given in para No.2 of the Special Civil Application.

4. The grievance of the petitioners is that there is a slope running downwards from north to south. Their fields are situated slightly on the higher level than the field of the respondent and other fields situated on the southern side. The natural flow of water is from north to south. As per the case of the petitioners, the water accumulated in the fields of the petitioners, flows across the road and enter survey No.203 belonging to the respondent and flows along the western boundary of the said field and entire survey No.200 situated on south of the respondent's field and thereafter via survey No.199, water is being discharged through the culvert situated on the State Highway. The petitioners' case is that the said natural flow is since the time immemorial.

5. The petitioners submitted that the respondent constructed earthen bank on the northern and western boundary of his field, and as such, caused obstruction to the natural flow of water, which resulted in water logging in the fields of the petitioners as well as on the road. The petitioners requested the respondent to allow the water to flow on its natural course, but he has not accepted, and as such, they filed a suit under sec.5 of the Act in the court of Mamlatdar at Lakhatar. The said suit has been filed for removal of the earthen bank constructed by the respondent. The Mamlatdar under its judgment dated 2nd March, 1984, decided the matter in favour of the petitioners. The respondent being aggrieved of the judgment of the Mamlatdar dated 2nd March, 1984, preferred a revision application before the

Deputy Collector, Dhangadhra Division under the provisions of sec.23 of the Act, and said revision application came to be allowed under the order dated 20th July, 1984. The revisional court held that the earthen bank was about 40 years old, and as such, the suit is time barred and it could not have been entertained by the Mamlatdar. Hence, this Special Civil Application.

6. The learned counsel for the petitioners contended that the revisional court has committed serious illegality in reversing the finding of fact recorded by the Mamlatdar. It has further been contended that the Mamlatdar on the basis of the material which had been produced on the record has reached to conclusion that the earthen bank has been constructed by the respondent recently.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioners.

8. The revisional court after appreciating the evidence of the parties has recorded a find of fact that the earthen bank was constructed 40 years back. The learned counsel for the petitioners is unable to satisfy this Court how this finding of the revisional court suffers from infirmity. It is not the case of the petitioners' counsel that the revisional court has misread the evidence. Unless the petitioners have made out a case of perverse finding of the revisional court or a case of no evidence, this Court will not enter in the arena of appreciation of evidence. It is a case where the revisional court has to decide the matter, and in case it has decided the matter in favour of the respondent on the basis of appreciation of evidence then this Court will not act as an appellate court. The powers or jurisdiction of this Court are not appellate powers. Moreover, the orders passed under the Mamlatdar Courts Act are not subject to second appeal or revision to this Court. This Court sitting under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. The powers of this Court under Article 227 of the Constitution must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this Court interferes. As stated earlier, the counsel for the petitioners is unable to make out any case of infirmity in the judgment of the revisional court to justify the interference of this Court under Article 227 of the Constitution.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

zgs/-